

EMPLOYER STATUS DETERMINATION  
**Great Western Lines, LLC**

This is the determination of the Railroad Retirement Board regarding the status of Great Western Lines, LLC, (GWL) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). GWL has not previously been determined to be an employer under the RRA and the RUIA.

Information about GWL was furnished by Mr. James A. Mogen, Controller of Omnitrax. GWL owns 23.4 miles of railroad track located in Colorado. GWL obtained authority to acquire the track in Surface Transportation Board (STB) Finance Docket No. 32952. GWL states that it has no employees and that it leases the track to the Great Western Railroad, an employer under the Acts, which operates the rail line.

Section 1(a)(1) of the RRA defines the term "employer" to include:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad \* \* \*. [45 U.S.C. §231(a)(1)(i) and (ii)].

Sections 1(a) and (b) of the RUIA (45 U.S.C. § 351(a) and (b)) contain essentially the same definition.

In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the STB certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the STB as

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the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the STB as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

GWL has no employees and operations are conducted by the employees of another railroad carrier, which is an employer under the Acts. Consistent with above-described analysis of cases such as this, a majority the Board finds that Great Western Lines, LLC is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

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Glen L. Bower

(Dissenting)

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V. M. Speakman, Jr.

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Jerome F. Keever